

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN RAPILLO AND HEIDI RAPILLO

Plaintiffs,

-against-

FILED BY ECF

BARRY FINGERHUT, DAVID HOLZER,
FINGERHUT-HOLZER PARTNERS LLC,
FINGERHUT-HOLZER EQUITIES, INC.,
FINGERHUT HOLZER, INC., FINGERHUT-
HOLZER FUND L.P., GEO-CAPITAL
PARTNERS, INC., FINGERHUT-HOLZER
THE WAVERLY I, LLC., FINGERHUT-
HOLZER THE WAVERLY II, LLC.

09-CV-10429 (VSB)

**DECLARATION OF ROBERT J.
CONWAY IN OPPOSITION TO
DEFENDANTS' SUMMARY
JUDGMENT MOTION**

Defendants.

-----X

Pursuant to 28 U.S.C. § 1746, Robert J. Conway declares under penalty of perjury that the foregoing is true and correct:

1. I am an attorney duly admitted to practice law in the State of New York and am a member of the bar of this Court. I am a partner of the law firm of Marshall, Conway & Bradley, P.C., attorneys for plaintiff, John Rapillo and Heidi Rapillo (collectively "Rapillos"). I have personal knowledge of the facts set forth herein and submit this declaration in opposition to Barry Fingerhut ("Fingerhut"), David Holzer ("Holzer"), Fingerhut-Holzer Partners LLC ("Fingerhut-Holzer LLC"), Fingerhut-Holzer Equities, Inc., Fingerhut Holzer, Inc., Fingerhut-Holzer Fund L.P., Geo-Capital Partners, Inc. ("Geo-Capital"), Fingerhut-Holzer The Waverly I, LLC. ("Waverly I"), Fingerhut-Holzer The Waverly II, LLC.'s ("Waverly II") (collectively "Defendants") motion for summary judgment against the Rapillos.

2. Annexed hereto as Exhibit 1 is a true, correct, and complete copy of Plaintiffs' Amended Verified Summons and Complaint, filed on August 10, 2010.

3. Annexed hereto as Exhibit 2 is Defendants' Verified Answer to the Amended Complaint, dated March 21, 2011.

4. Annexed hereto as Exhibit 3 is Defendant, David Holzer's letter constituting Holzer's Answer, dated February 4, 2010.

5. Annexed hereto as Exhibit 4 is a true, correct, and complete copy of the transcript from the deposition of Barry Fingerhut, dated February 7, 2013.

6. Annexed hereto as Exhibit 5 is a true, correct, and complete copy of the transcript from the deposition of David Holzer, dated March 28, 2012

7. Annexed hereto as Exhibit 6 is a notarized affidavit signed by John Rاپillo, dated September 23, 2015.

8. Annexed hereto as Exhibit 7 is a notarized affidavit signed by Heidi Rاپillo, dated September 23, 2015.

9. Annexed hereto as Exhibit 8 is a document showing the transfer of \$300,000.00 from the Rاپillos to Foley & Lardner, dated October 19, 2015.

10. Annexed hereto as Exhibit 9 is a document showing the transfer of \$600,000.00 from the Rاپillos to David & Leslie Holzer dated December 15, 2005.

11. Annexed hereto as Exhibit 10 is a document showing the transfer of \$200,000.00 from the Rاپillos to David & Leslie Holzer dated January 31, 2006.

12. Annexed hereto as Exhibit 11 is a document showing the transfer of \$800,000.00 from the Rاپillos to David & Leslie Holzer dated March 23, 2006.

13. Annexed hereto as Exhibit 12 Contingent Assignment of Equity Interests Agreement, entered into between Holzer and Fingerhut, dated October 3, 2007.

14. Annexed hereto as Exhibit 13 is a Secured Promissory Note in the amount of \$7,603,800 between Fingerhut and Holzer dated October 9, 2007.

15. Annexed hereto as Exhibit 14 is a Fingerhut-Holzer Partners Introduction to the Waverly at Deerwood Commons.

16. Annexed hereto as Exhibit 15 is a the Schedule of Fingerhut-Holzer Investments

17. Annexed hereto as Exhibit 16 is a true, correct, and complete copy of transcript from David Holzer's appearance before Judge Thomas Farber regarding his guilty plea in the related criminal action, dated April 30, 2009.

18. Annexed hereto as Exhibit 17 is a the 2005 Schedule K-1 issued to the Rapiellos by Fingerhut-Holzer Partners for The Waverly I.

19. Annexed hereto as Exhibit 18 is a the 2007 Schedule K-1 issued to the Rapiellos Fingerhut Management The Waverly, LLC.


20. Annexed hereto as Exhibit 19 is the Fingerhut-Holzer Fund, L.P. Limited Partnership Agreement, dated October 1, 2004.

21. Annexed hereto as Exhibit 20 is a letter from Fingerhut to Heidi Rapiello, dated November 7, 2008.

22. Annexed hereto as Exhibit 21 is the SEC filing showing the transfer of V. Campus Corp. shares to Fingerhut, dated January 25, 2008.

Dated: New York, New York
September 30, 2015

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